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8 **U.S. BANKRUPTCY COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 In Re: BORREGO COMMUNITY
HEALTH FOUNDATION,

Case No. 3:22-bk-02384-LT11

Chapter 11

12 Debtor and Debtor-in-Possession.

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES (LIMITED)
OBJECTION TO SALE AND
SUPPLEMENTAL OPPOSITION TO
DEBTOR'S NOTICE OF MOTION
AND MOTION FOR ENTRY OF (I)
AN ORDER (1) APPROVING FORM
OF ASSET PURCHASE
AGREEMENT; (2) APPROVING
AUCTION SALE FORMAT AND
BIDDING PROCEDURES; (3)
APPROVING PROCESS FOR
DISCRETIONARY SELECTION OF
STALKING HORSE BIDDER AND
BID PROTECTIONS; (4)
APPROVING FORM OF NOTICE TO
BE PROVIDED TO INTERESTED
PARTIES; (5) SCHEDULING A
COURT HEARING TO CONSIDER
APPROVAL OF THE SALE TO THE
HIGHEST AND BEST BIDDER; AND
(6) APPROVING PROCEDURES
RELATED TO THE ASSUMPTION
OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED
LEASES; AND (II) AN ORDER
AUTHORIZING THE SALE OF
PROPERTY FREE AND CLEAR OF
ALL CLAIMS, LIENS AND
ENCUMBRANCES**

Date: March 1, 2023

Time: 10:00 a.m.

Place: Dept 3, Room 129

1 The U.S. Department of Health and Human Services (“HHS”) hereby submits its
2 Supplemental Opposition to Debtor’s Sale Motion. HHS hereby incorporates by
3 reference and supplements its Opposition to Debtor’s Sale Motion filed on November
4 18, 2022 [Dkt. No. 206] (“HHS Opposition”).

5 HHS reiterates and incorporates by reference its objections set forth in its
6 Opposition to Debtor’s Sale Motion filed on November 18, 2022 [Dkt. No. 206, pages
7 8-13] and Objection to Debtor’s Cure Notice filed on February 13, 2023 [Dkt. No. 458].
8 The Asset Purchase Agreements attached to Debtor’s Notice of Winning Bidder and
9 Back-Up Bidder filed on February 15, 2023 [Dkt. No. 465], purport to sell the Medicare
10 .Provider Agreements as part of the sale. [Dkt. No. 465, Exhibits 1 and 2, on p. 6,
11 Section 1.7(b) or page 13 and 56 of 111]. HHS objects as the Medicare Provider
12 Agreements are executory contracts, which need to be assumed and assigned or rejected
13 under 11 U.S.C. § 365.¹

14 HHS has requested, but Debtor has failed to provide, a complete list of assets
15 purchased with HRSA grants.² Pursuant to the terms and conditions of the HRSA grants,
16 Debtor is required to keep an inventory of all property purchased with HRSA funds.
17 Specifically, Debtor must maintain property records “that include a description of the
18 property, a serial number or other identification number, the source of funding for the
19 property (including the [Federal Award Identification Number]), who holds title, the
20 acquisition date, and cost of the property, percentage of Federal participation in the
21 project costs for the Federal award under which the property was acquired, the location,
22

23 ¹ HHS and Debtor are attempting to meet and confer to see if the parties can resolve this
24 issue.

25 ² On February 16, 2023, Debtor submitted a purported list of assets purchased with
26 HRSA grant funds. This list is deficient for multiple reasons, including because it is not
27 a final comprehensive list (i.e., a work-in-progress); it lists numerous items in broad
28 categories (e.g., “Misc. Quality Department Equipment,” “Office Equipment,” “Dental
Equipment”); and it does not identify the specific HRSA grants used to purchase each
of the items on the list.

1 use and condition of the property, and any ultimate disposition data including the date
2 of disposal and sale price of the property.” 45 C.F.R. § 75.320(d)(1). Additionally, a
3 “physical inventory of the property must be taken and the results reconciled with the
4 property records at least once every two years.” 45 C.F.R. § 75.320(d)(2). Debtor has
5 failed to provide HHS with this list of equipment. Thus, neither HHS nor any potential
6 buyer of Debtor’s business is currently able to ascertain what assets may not transfer if
7 the potential buyer is not approved as a Successor In Interest by HRSA.

8 Therefore, in addition to the reasons set forth in the HHS Opposition, HHS
9 objects to the sale because Debtor has failed to provide a complete list of property
10 purchased with HRSA grant funding.

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12 Dated: February 21, 2023

Respectfully Submitted,

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